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House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HOUSE BILL 2146

AN ACT

AMENDING SECTION 33-1243, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1813; RELATING TO HOMEOWNER ASSOCIATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1243, Arizona Revised Statutes, is amended to
3 read:

4 33-1243. Board of directors and officers: conflict: powers:
5 limitations: removal: annual audit

6 A. Except as provided in the declaration, the bylaws, subsection B or
7 other provisions of this chapter, the board of directors may act in all
8 instances on behalf of the association.

9 B. The board of directors shall not act on behalf of the association
10 to amend the declaration, terminate the condominium, elect members of the
11 board of directors or determine the qualifications, powers and duties or
12 terms of office of board of directors members. The board of directors may
13 fill vacancies in its membership for the unexpired portion of any term.

14 C. If any contract, decision or other action for compensation taken by
15 or on behalf of the board of directors would benefit any member of the board
16 of directors or any person who is a parent, grandparent, spouse, child or
17 sibling of a member of the board of directors or a parent or spouse of any of
18 those persons, that member of the board of directors shall declare a conflict
19 of interest for that issue. The member shall declare the conflict in an open
20 meeting of the board before the board discusses or takes action on that issue
21 and that member may then vote on that issue. Any contract entered into in
22 violation of this subsection is void and unenforceable.

23 D. Except as provided in the declaration, within thirty days after
24 adoption of any proposed budget for the condominium, the board of directors
25 shall provide a summary of the budget to all the unit owners. Unless the
26 board of directors is expressly authorized in the declaration to adopt and
27 amend budgets from time to time, any budget or amendment shall be ratified by
28 the unit owners in accordance with the procedures set forth in this
29 subsection. If ratification is required, the board of directors shall set a
30 date for a meeting of the unit owners to consider ratification of the budget
31 not fewer than fourteen nor more than thirty days after mailing of the
32 summary. Unless at that meeting a majority of all the unit owners or any
33 larger vote specified in the declaration rejects the budget, the budget is
34 ratified, whether or not a quorum is present. If the proposed budget is
35 rejected, the periodic budget last ratified by the unit owners shall be
36 continued until such time as the unit owners ratify a subsequent budget
37 proposed by the board of directors.

38 E. The declaration may provide for a period of declarant control of
39 the association, during which period a declarant or persons designated by the
40 declarant may appoint and remove the officers and members of the board of
41 directors. Regardless of the period provided in the declaration, a period of
42 declarant control terminates no later than the earlier of:

43 1. Ninety days after conveyance of seventy-five per cent of the units
44 which may be created to unit owners other than a declarant.

45 2. Four years after all declarants have ceased to offer units for sale
46 in the ordinary course of business.

1 F. A declarant may voluntarily surrender the right to appoint and
2 remove officers and members of the board of directors before
3 termination of the period prescribed in subsection E, but in that event the
4 declarant may require, for the duration of the period of declarant control,
5 that specified actions of the association or board of directors, as described
6 in a recorded instrument executed by the declarant, be approved by the
7 declarant before they become effective.

8 G. Not later than the termination of any period of declarant control
9 the unit owners shall elect a board of directors of at least three members,
10 at least a majority of whom must be unit owners. The board of directors
11 shall elect the officers. The board members and officers shall take office
12 upon election.

13 H. Notwithstanding any provision of the declaration or bylaws to the
14 contrary, the unit owners, by a ~~two-thirds~~ MAJORITY vote of all persons
15 ~~present and~~ entitled to vote at any meeting of the unit owners at which a
16 quorum is present, may remove any member of the board of directors with or
17 without cause, other than a member appointed by the declarant. FOR PURPOSES
18 OF CALLING FOR REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS, OTHER THAN A
19 MEMBER APPOINTED BY THE DECLARANT, THE FOLLOWING APPLY:

20 1. IN AN ASSOCIATION WITH ONE THOUSAND MEMBERS OR FEWER, ON RECEIPT OF
21 A PETITION THAT CALLS FOR REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AND
22 THAT IS SIGNED BY THE NUMBER OF PERSONS WHO ARE ENTITLED TO CAST AT LEAST
23 TWENTY-FIVE PER CENT OF THE VOTES IN THE ASSOCIATION OR ONE HUNDRED VOTES IN
24 THE ASSOCIATION, WHICHEVER IS LESS, THE BOARD SHALL CALL AND PROVIDE WRITTEN
25 NOTICE OF A SPECIAL MEETING OF THE ASSOCIATION AS PRESCRIBED BY SECTION
26 33-1248, SUBSECTION B.

27 2. NOTWITHSTANDING SECTION 33-1248, SUBSECTION B, IN AN ASSOCIATION
28 WITH MORE THAN ONE THOUSAND MEMBERS, ON RECEIPT OF A PETITION THAT CALLS FOR
29 REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AND THAT IS SIGNED BY THE
30 NUMBER OF PERSONS WHO ARE ENTITLED TO CAST AT LEAST TEN PER CENT OF THE VOTES
31 IN THE ASSOCIATION OR ONE THOUSAND VOTES IN THE ASSOCIATION, WHICHEVER IS
32 LESS, THE BOARD SHALL CALL AND PROVIDE WRITTEN NOTICE OF A SPECIAL MEETING OF
33 THE ASSOCIATION. THE BOARD SHALL PROVIDE WRITTEN NOTICE OF A SPECIAL MEETING
34 AS PRESCRIBED BY SECTION 33-1248, SUBSECTION B.

35 3. THE SPECIAL MEETING SHALL BE CALLED, NOTICED AND HELD WITHIN THIRTY
36 DAYS AFTER RECEIPT OF THE PETITION.

37 4. FOR PURPOSES OF A SPECIAL MEETING CALLED PURSUANT TO THIS
38 SUBSECTION, A QUORUM IS PRESENT IF THE NUMBER OF OWNERS TO WHOM AT LEAST
39 TWENTY-FIVE PER CENT OF THE VOTES ARE ALLOCATED, OR A NUMBER AS IS PROVIDED
40 IN THE DECLARATION, BYLAWS OR OTHER DOCUMENTS, WHICHEVER IS LESS, IS PRESENT
41 AT THE MEETING IN PERSON OR AS OTHERWISE PERMITTED BY LAW.

42 5. IF A CIVIL ACTION IS FILED REGARDING THE REMOVAL OF A BOARD MEMBER,
43 THE PREVAILING PARTY IN THE CIVIL ACTION SHALL BE AWARDED ITS REASONABLE
44 ATTORNEY FEES AND COSTS.

45 6. THE BOARD OF DIRECTORS SHALL RETAIN ALL DOCUMENTS AND OTHER RECORDS
46 RELATING TO THE PROPOSED REMOVAL OF THE MEMBER OF THE BOARD OF DIRECTORS FOR

1 AT LEAST ONE YEAR AFTER THE DATE OF THE SPECIAL MEETING AND SHALL PERMIT
2 MEMBERS TO INSPECT THOSE DOCUMENTS AND RECORDS PURSUANT TO SECTION 33-1258.

3 7. A PETITION THAT CALLS FOR THE REMOVAL OF THE SAME MEMBER OF THE
4 BOARD OF DIRECTORS SHALL NOT BE SUBMITTED MORE THAN ONCE DURING EACH TERM OF
5 OFFICE FOR THAT MEMBER.

6 I. FOR AN ASSOCIATION IN WHICH BOARD MEMBERS ARE ELECTED FROM
7 SEPARATELY DESIGNATED VOTING DISTRICTS, A MEMBER OF THE BOARD OF DIRECTORS,
8 OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, MAY BE REMOVED ONLY BY A VOTE
9 OF THE MEMBERS FROM THAT VOTING DISTRICT, AND ONLY THE MEMBERS FROM THAT
10 VOTING DISTRICT ARE ELIGIBLE TO VOTE ON THE MATTER OR BE COUNTED FOR PURPOSES
11 OF DETERMINING A QUORUM.

12 ~~I.~~ J. Unless any provision in the condominium documents requires an
13 annual audit by a certified public accountant, the board of directors shall
14 provide for an annual financial audit, review or compilation of the
15 association. The audit, review or compilation shall be completed no later
16 than one hundred eighty days after the end of the association's fiscal year
17 and shall be made available upon request to the unit owners within thirty
18 days after its completion.

19 Sec. 2. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
20 amended by adding section 33-1813, to read:

21 33-1813. Removal of board member; special meeting

22 A. NOTWITHSTANDING ANY PROVISION OF THE DECLARATION OR BYLAWS TO THE
23 CONTRARY, THE MEMBERS, BY A MAJORITY VOTE OF ALL PERSONS ENTITLED TO VOTE AT
24 ANY MEETING OF THE ASSOCIATION AT WHICH A QUORUM IS PRESENT, MAY REMOVE ANY
25 MEMBER OF THE BOARD OF DIRECTORS WITH OR WITHOUT CAUSE, OTHER THAN A MEMBER
26 APPOINTED BY THE DECLARANT. FOR PURPOSES OF CALLING FOR REMOVAL OF A MEMBER
27 OF THE BOARD OF DIRECTORS, OTHER THAN A MEMBER APPOINTED BY THE DECLARANT,
28 THE FOLLOWING APPLY:

29 1. IN AN ASSOCIATION WITH ONE THOUSAND MEMBERS OR FEWER, ON RECEIPT OF
30 A PETITION THAT CALLS FOR REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AND
31 THAT IS SIGNED BY THE NUMBER OF PERSONS WHO ARE ENTITLED TO CAST AT LEAST
32 TWENTY-FIVE PER CENT OF THE VOTES IN THE ASSOCIATION OR ONE HUNDRED VOTES IN
33 THE ASSOCIATION, WHICHEVER IS LESS, THE BOARD SHALL CALL AND PROVIDE WRITTEN
34 NOTICE OF A SPECIAL MEETING OF THE ASSOCIATION AS PRESCRIBED BY SECTION
35 33-1804, SUBSECTION B.

36 2. NOTWITHSTANDING SECTION 33-1804, SUBSECTION B, IN AN ASSOCIATION
37 WITH MORE THAN ONE THOUSAND MEMBERS, ON RECEIPT OF A PETITION THAT CALLS FOR
38 REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AND THAT IS SIGNED BY THE
39 NUMBER OF PERSONS WHO ARE ENTITLED TO CAST AT LEAST TEN PER CENT OF THE VOTES
40 IN THE ASSOCIATION OR ONE THOUSAND VOTES IN THE ASSOCIATION, WHICHEVER IS
41 LESS. THE BOARD SHALL PROVIDE WRITTEN NOTICE OF A SPECIAL MEETING AS
42 PRESCRIBED BY SECTION 33-1804, SUBSECTION B.

43 3. THE SPECIAL MEETING SHALL BE CALLED, NOTICED AND HELD WITHIN THIRTY
44 DAYS AFTER RECEIPT OF THE PETITION.

45 4. FOR PURPOSES OF A SPECIAL MEETING CALLED PURSUANT TO THIS
46 SUBSECTION, A QUORUM IS PRESENT IF THE NUMBER OF OWNERS TO WHOM AT LEAST

1 TWENTY-FIVE PER CENT OF THE VOTES ARE ALLOCATED, OR A NUMBER AS IS PROVIDED
2 IN THE DECLARATION, BYLAWS OR OTHER DOCUMENTS, WHICHEVER IS LESS, IS PRESENT
3 AT THE MEETING IN PERSON OR AS OTHERWISE PERMITTED BY LAW.

4 5. IF A CIVIL ACTION IS FILED REGARDING THE REMOVAL OF A BOARD MEMBER,
5 THE PREVAILING PARTY IN THE CIVIL ACTION SHALL BE AWARDED ITS REASONABLE
6 ATTORNEY FEES AND COSTS.

7 6. THE BOARD OF DIRECTORS SHALL RETAIN ALL DOCUMENTS AND OTHER RECORDS
8 RELATING TO THE PROPOSED REMOVAL OF THE MEMBER OF THE BOARD OF DIRECTORS FOR
9 AT LEAST ONE YEAR AFTER THE DATE OF THE SPECIAL MEETING AND SHALL PERMIT
10 MEMBERS TO INSPECT THOSE DOCUMENTS AND RECORDS PURSUANT TO SECTION 33-1805.

11 7. A PETITION THAT CALLS FOR THE REMOVAL OF THE SAME MEMBER OF THE
12 BOARD OF DIRECTORS SHALL NOT BE SUBMITTED MORE THAN ONCE DURING EACH TERM OF
13 OFFICE FOR THAT MEMBER.

14 B. FOR AN ASSOCIATION IN WHICH BOARD MEMBERS ARE ELECTED FROM
15 SEPARATELY DESIGNATED VOTING DISTRICTS, A MEMBER OF THE BOARD OF DIRECTORS,
16 OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, MAY BE REMOVED ONLY BY A VOTE
17 OF THE MEMBERS FROM THAT VOTING DISTRICT, AND ONLY THE MEMBERS FROM THAT
18 VOTING DISTRICT ARE ELIGIBLE TO VOTE ON THE MATTER OR BE COUNTED FOR PURPOSES
19 OF DETERMINING A QUORUM.